



Department of Health

ANDREW M. CUOMO
Governor

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Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 19, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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NYS Department of Health
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Emmanuella Cherisme-Theophile, M.D.



RE: In the Matter of Emmanuella Cherisme-Theophile, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-354) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

[REDACTED]
James P. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Emmanuella Cherisme-Theophile, M.D.
(Respondent)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 17- 354

Before ARB Members D'Anna, ¹Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Claudia Morales Bloch, Esq.
For the Respondent: Jennifer Kirschenbaum, Esq.

After a hearing below, a BPMC Committee sustained charges that the Respondent practiced medicine fraudulently. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License), to stay the suspension, to place the Respondent on probation and to order that the Respondent complete continuing medical education (CME). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2017), the Petitioner asks the ARB to overturn the Committee and revoke the Respondent's License. After reviewing the hearing record and the parties' review submissions, the ARB votes 4-0 to overturn the Committee and to revoke the Respondent's License.

¹ ARB Member Peter Koenig was unable to participate in the deliberations in this case. The ARB considered the case with a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2-5), 6530 (14) & 6530(32) (McKinney Supp. 2017) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- violating the provisions at PHL § 2805-k and
- failing to maintain accurate records.

The negligence, incompetence and records charges related to the care that the Respondent provided to three patients the Respondent treated at Long Island College Hospital (LICH). The fraud and § 2805-k charges related to information the Respondent submitted on applications to residency programs, hospitals and medical practices, in addition to License renewal applications for 2007 and 2011.

The Committee dismissed all charges relating to the care for the three patients. The Petitioner makes no challenge in this Review to the Committee's Determination on the patient care charges.

The Committee found that the Respondent left positions at five institutions or practices over the course of eight years. First, Gessinger Medical Center (Gessinger) dismissed the Respondent from residency training in January 2002. Further, the State University of New York Health Sciences Center Brooklyn, Kings County Hospital and the State University of New York Downstate (Downstate) decided to suspend and not graduate the Respondent, which decision was sustained on July 7, 2004. Next, Lourdes Medical Associates (Lourdes) terminated the Respondent from an employment contract on November 1, 2006. In addition, Southern Jersey Family Medical Center (Southern) suspended the Respondent on July 25, 2007 and the Respondent submitted a letter of resignation on July 27, 2007, which was pre-dated to July 24,

2007. Finally, the Long Island College Hospital (LICH) terminated the Respondent as an attending physician on November 10, 2010 and thereafter the Respondent entered a settlement agreement with LICH in which the Respondent resigned her medical staff privileges effective December 31, 2010.

The Committee's Determination then detailed answers that the Respondent gave on applications and License registration renewals. On an application to Nassau University Medical Center (Nassau), in response to a question on whether she had ever been terminated from employment, the Respondent answered that she "did not graduate" from Downstate. The Committee found that Downstate had terminated the Respondent for cause. In a September 7, 2006 application to Lourdes Medical Associates (Lourdes), the Respondent indicated that she left Gessinger due to "family leave of absence" and "contract dispute." The Committee found that Gessinger had terminated the Respondent for cause. The Committee also found that the Respondent's December 14, 2006 application for medical staff appointment at Southern misstated the reasons the Respondent left Downstate and Lourdes and failed to list the employment history at Gessinger. On a February 20, 2009 application to LICH, the Respondent indicated that she had received no certificate of completion from Downstate and omitted any mention concerning Gessinger. The Respondent also failed to mention that Lourdes had terminated the Respondent for cause and Southern had suspended the Respondent for cause. On the Respondent's 2007 New York State License Registration Renewal (2007 Renewal), the Respondent failed to disclose her termination for cause at Lourdes, her suspension from Southern and her employment/privileges termination at LICH. On her August 4, 2011 New York State License Registration Renewal (2011 Renewal), the Respondent failed to disclose her termination for cause from LICH.

The Petitioner charged the Respondent with violating PHL § 2805-k. That statute requires any licensed New York medical facility to request information from physicians prior to granting or renewing employment or privileges for those physicians at the facility. The requested information includes any prior privileges or employment at other facilities, discontinuation of such privileges or employment and the reason for the discontinuation. The Committee sustained

the charge that the Respondent violated PHL § 2805-k by failing to provide truthful or complete information to LICH about Gessinger, Downtown, Lourdes and Southern.

The Committee also sustained charges that the Respondent practiced fraudulently by providing false information or withholding information from the applications to Nassau, Lourdes, Southern and LICH, as well as the 2007 and 2011 Renewals. The Committee found that the Respondent made false representations, knew the representations were false and intended to mislead through the false representations. The Committee inferred the Respondent's intent to mislead due to the predictable repercussions that would have followed from answering truthfully. The Committee found that each time an institution terminated the Respondent, she failed to answer honestly on subsequent applications. The Committee rejected Respondent's explanations that the terminations were not her fault, that she didn't get fired, that she didn't know she was fired and that she didn't lie. The Committee stated that they might have accepted the Respondent's explanations if there had only been one or two false answers, but the false answers occurred again and again and again with each job and each application.

The Committee stated that the fraudulent conduct warranted revocation, but the Committee found mitigating circumstances in the Respondent's strong bedside manner and her commitment to caring for underserved populations in Haiti and in Pennsylvania. The Committee found that it would be a disservice to the public to remove the Respondent from practice without giving her a chance to address her shortcomings. The Committee characterized the Respondent as a skilled physician who meets the standard of care, but has serious interpersonal difficulty with colleagues and superiors and has failed to be truthful to medical institutions and her licensing agency. The Committee voted to suspend the Respondent's License for two years, to stay the suspension, to place the Respondent on probation for two years and to order the Respondent to complete a CME course in Medical Ethics, with a focus on professional honesty and cooperation. The Probation includes a requirement that the Respondent receive treatment from a Psychiatrist or Clinical Psychologist.

Review History and Issues

The Committee rendered their Determination on May 8, 2017. This proceeding commenced on May 12, 2017, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on June 20, 2017.

The Petitioner requests that the ARB overturn the sanction the Committee imposed and revoke the Respondent's License. The Petitioner alleges error by the Committee in failing to follow their determination that the Respondent's fraudulent conduct warranted revocation. The Petitioner wrote that, in addition to finding that the Respondent practiced fraudulently, the Committee also found the Respondent untrustworthy in her testimony at the hearing.

The Respondent replies that the Committee was the best positioned to make the determination on the proper penalty in this case. The Respondent's Reply Brief argued that the penalty the Committee imposed is already extremely burdensome, but the Respondent indicated that she will accept the sanction.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan

v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of MinIELLY v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent practiced fraudulently and violated PHL §

2805-k. The Respondent made no challenge to the Committee's findings on those charges. The ARB also affirms the Committee's Determination to dismiss the charges relating to the treatment for Patients A-C. The Petitioner limited its review brief to requesting a change in the penalty only. The ARB finds the penalty the Committee imposed to be inappropriate and inconsistent with the Committee's findings. We overturn the Committee and vote 4-0 to revoke the Respondent's License.

The Probation the Committee ordered included the requirement that the Respondent undergo treatment by a Psychiatrist or Clinical Psychologist. The ARB finds that requirement inappropriate because there was no charge that the Respondent suffered from a condition that requires treatment by a psychiatrist. The Committee also ordered that the Respondent undergo CME in Medical Ethics. The ARB doubts that the Respondent can learn ethics at this point. The Respondent showed no remorse at hearing and took no responsibility for her conduct, so the Respondent gave no indication that she was inclined to change her behavior. The Committee found the Respondent still untrustworthy in her testimony before the Committee.

The Committee findings showed serious misconduct by providing false answers and withholding information from facilities and the State as those entities inquired into the Respondent's professional credentials. The system for credentialing physicians exists to protect the public from incompetent or dishonest physicians who move from one facility to another after terminations for cause. That system depends on physicians to answer honestly about their employment and practice at other facilities. Honesty is as essential to medical practice as skill and knowledge. Physicians must deal honestly with patients, other physicians and health care providers, administrators, insurers and regulators. A CME course won't teach honesty to a physician who lacks it.

The Committee found that the Respondent made deliberate false statements or deliberately withheld information with the intent to deceive. The Committee inferred that the Respondent answered falsely to avoid the repercussions that she knew would follow a truthful answer. The Committee also found that the conduct occurred again and again and again over the course of years. The ARB concludes that the Respondent's conduct has proven her unfit to practice medicine in the State of New York.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination on the sanction to impose in the Respondent's case.
3. The ARB votes 4-0 to revoke the Respondent's License.

Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Emmanuella Cherisme-Theophile, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Cherisme-Theophile.

Dated: 15 October 2017

Linda Prescott Wilson



In the Matter of Emmanuella Cherisme-Theophile, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Cherisme-Theophile.

Dated: 12 / 14, 2017


Steven Grabiec, M.D.

In the Matter of Emmanuella Cherisme-Theophile, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Cherisme-Theophile.

Dated: December 8, 2017

Richard D. Milone, M.D.

In the Matter of Emmanuella Cherisme-Theophile, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Cherisme-Theophile.

Dated: Dec 15, 2017

John A. D'Anna, M.D.